IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 76 OF 1990

The State of Maharashtra
through the Special Land
Acquisition Officer, Panvel,
Taluka: Panvel, Dist. Raigad. ... Appellant.
(Org.Opponent.)

Versus.

1. Walkaya Sitaram Surate.
2. Shri Atmaram Sitaram Surate.
3. Shri Madhukar Baliram Surate.
4. Smt.Mathurabai Sawalaram Surate. ... Respondents.
(Org.Claimants.)

Shri K.K.Tated for the Appellant.

Shri Sachin Punde i/by Shri P.L.Patil for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 18th March, 2006.

ORAL JUDGMENT.

1. By this First Appeal the Appellant-State has taken exception to the judgment and award dated 22nd February 1989 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. By the impugned Judgment and Award, a Reference under section 18 of the Land Acquisition Act 1894 (hereinafter referred to as the said Act of 1894) made at the instance of the Respondents (original Claimants) was partly allowed.

2. The land subject matter of this appeal is Survey No.258, Hissa No.3 admeasuring 2600 sq.meters situated in village Kamothe, Taluka Panvel, District Raigad. Notification under section 4 of the said Act of 1894 was issued on 3rd February 1970. By the said notification several other lands from the same village and other villages of Taluka Panvel were notified for acquisition for the public purpose of development of satellite city of Navi Mumbai. In responce to the notice under section 9 of the said Act of 1894, the Respondents herein submitted a claim for compensation at the rate of Rs.15/- per sq.meters. The Land Acquisition Officer awarded compensation by fixing the market value at Rs.2/- per sq.meter. The award under section 11 of the said Act of 1894 was made on 16th September 1986. By the impugned Judgment and Award, the Reference Court enhanced the market value to Rs.12/- per sq.meter.

3. Shri Tated, the learned A.G.P. appearing for the Appellant submitted that the sale instances which are relied upon by the Respondents are not at all relevant as the same pertain to the lands which are situated in other villages. He submitted that there is no evidence to show that sale instances were of the lands which are comparable with the acquired land. He

submitted that the Reference Court ought to have deducted a reasonable amount from the market value towards development charges.

4. The learned Advocate appearing for the Respondents invited my attention to the Judgment and Order dated 25th/26th February 1993 delivered by the Division Bench of this Court (Coram: S.W.Puranik and D.J.Moharir, JJ) in First Appeal No.754 of 1986. He submitted that the market value of the similarly situated land is fixed at Rs.20/- per sq.meters. He submitted that the said decision of the Division Bench has attained finality. He submitted that the cross objections filed by the Respondents deserve to be allowed.

5. I have considered the submissions. A perusal of the decision of the Division Bench in First Appeal No.754 of 1986 and other connected matters shows that the Division Bench was considering the Appeals filed by the original Claimants arising out of the awards passed by the Reference Court in References under section 18 of the said Act of 1894 in respect of lands at villages Kamothe and Panvel in Taluka Panvel, District Raigad. The acquisition of the lands subject of the said Appeal is also for New Bombay Project and the date of section 4

notification is also 3rd February 1970.

6. The Division Bench divided the lands subject matter of the Appeals before it into five categories. The first category is of land abutting the Bombay-Pune High Way where this Court fixed the market value at the rate of Rs.25/- per sq.meter. The second category is of lands which are situated upto 800 meters from the Highway. In respect of these lands the Division Bench fixed the market value at the rate of Rs.23/- per sq.meter. The third category of land is of lands abutting the Zilla Parishad Road which were at a distance of not more than 1200 meters from Bombay-Pune Highway. In case of said lands the market value at the rate of Rs.22/- has been fixed by the Division Bench. The forth category was of land which are at a distance of 800 to 2200 meters from the Bombay-Pune Highway where the rate fixed by the Division Bench is Rs.20/- per sq.meter. In case of last category of lands which are situated at 200 to 640 meters from the Zilla Parishad Road and Gaothan Road the rate was fixed at Rs.20/- per sq.meters.

7. In the present case, from the evidence on record and especially the valuation report of the expert produced by the Respondents, it appears that the

acquired land was at a distance of about 3280 meters from the Bombay-Pune Highway and at a distance of 2560 meters from the Sion-Panvel Highway. The decision of the Division Bench has attained finality. Going by the decision of the Division Bench it is obvious that the market value fixed by the Reference Court is on the lower side. By filing the cross objection, the Respondents have claimed market value at the rate of Rs.15/- per sq.meters. Considering the Judgment of the Division Bench, the market value of the acquired land will be certainly more than Rs.15/- per sq.meter. The Division Bench has awarded market value at the rate of Rs.20/- per sq.meter for the lands upto distance of 2200 meters from Bombay-Pune National Highway. In this case, the distance is 3280 meters from the Highway. The market value of the land in this case cannot be less than Rs.17 to Rs.18 per sq.meter. As far as the submission of Shri Tated, the learned A.G.P. about the deduction of development charges is concerned, even assuming that the said submission is true, in fact the Respondents were entitled to the market value at the rate which is much more than Rs.15/-. Since the Claimants have restricted their claim to Rs.15/- per sq.meter in the cross objection, there is no necessity of making any further deduction and the Respondents will be entitled to the market value at the said rate.

8. Hence the following order is passed:

i) The First Appeal is dismissed with no order as to costs.

ii) The Cross Objection filed by the Respondents is allowed.

iii) The Judgment and Award dated 22nd March 1989 passed by the Reference Court is modified only to the extent that the Respondents will be entitled to the market value at the rate of Rs.15/-per sq.meter. The Respondents will also be entitled to other statutory benefits which are already granted by the Reference Court.

iv) The Reference Court will redetermine the compensation payable by the State Government to the Respondents on the basis of the market value of Rs.15/- per sq.meter. This exercise shall be completed within a period of four months from the date of receipt of the writ of this order.

v) The Respondents will be entitled to proportionate costs throughout.

Judge.